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ILLINOIS COMMERCE COMMISSION

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BEFORE THE
ILLINOIS COMMERCE COMMISSION

ILLINOIS
COMMERCE COMMISSION

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ILLINOIS COMMERCE COMMISSION
On Its Own Motion

CHIEF CLERK'S OFFICE

Docket No. 00-0007

Requirements governing the form and content
of contract summaries for the neutral fact-finder)
process for 2000 under Section 16-112(c) of
the Public Utilities Act.

REPLY BRIEF ON EXCEPTIONS
OF THE AMEREN COMPANIES

Central Illinois Public Service Company and Union Electric Company
(collectively, the "Ameren Companies") hereby reply to the briefs on exceptions of New Energy
Midwest, L.L.C. ("NEV") and Commonwealth Edison Company ("ComEd") with respect to the
Hearing Examiner's Proposed Order ("Proposed Order"), dated March 30, 2000.

I. REPLY TO NEV

The Proposed Order properly rejects NEV's proposed revisions to the instructions
for completing the contract summary form and worksheets to be submitted by electric utilities
and alternative retail electric suppliers to the neutral fact finder ("NFF"). The proposals of NEV
rejected by the Commission included, inter alia, recommendations that reporting utilities be
required to (i) provide information for calculating costs associated with load shaping and load
following (NEV Exc., p. 7) and (ii) "explain in their contract summaries whether the rates
charged during the calendar year are understated due to profits received or potential profits to be
received outside of calendar year 2001" (NEV Exc., p. 11).

In taking exception to the Proposed Order's decisions in this regard, NEV (Exc. p.
2) asserts that the "Proposed Order fails to acknowledge the universal agreement of the parties
regarding the flaws in the NFF process and the failure of prior NFF calculations to accurately

reflect the actual Market Values." NEV's assertion is incorrect. In fact, the Proposed Order (p. 5) expressly states the "NFF process is problematic" and that "most, if not all the parties, agree that the NFF's market value determinations in the 1999 NFF Report missed the mark."

Moreover, as the Proposed Order also correctly recognizes adoption of NEV's recommendations will not improve the NFF process. As the Ameren Companies discussed in their Initial Brief (pp. 6-7), NEV's recommendations all involve attempts to correct problems with objective data (*e.g.*, the prices agreed to in reported contracts) by introducing subjective data (*e.g.*, what the parties think the market value really is). There are several problems with this approach. First, it is inconsistent with the Customer Choice Law. Second, it makes the process more susceptible to manipulation by the reporting entities. Finally, it falsely suggests that the underlying problems with the NFF process have been corrected.

In this regard, NEV's suggestion (Exc., p. 2) that it is the "utilities'" position that the Commission "should not do anything to address the problems" resulting from the NFF process is unwarranted. To the contrary, the Ameren Companies and other utilities have made it clear that the Commission should pursue alternatives to the NFF process for purposes of calculating market values. As NEV recognizes (Exc., p. 3), one such alternative, proposed by ComEd, is currently being considered in Docket 00-0259. As the Ameren Companies discussed in their Initial Brief (pp. 1-2), the calculation of accurate market values is vital to the development of a competitive market for electricity in Illinois. The problem with proposals, such as NEV's, for the use of subjective data in the NFF process is that it simply masks the flaws inherent in that process and suggests that the Commission need not pursue an alternative method of determining market value when, in fact, the opposite is true. The NFF process is deeply flawed and beyond repair. The process cannot be fixed by adjusting the results of the process to reflect reporting entities' potentially self-serving and subjective forecasts of market value.

II. REPLY TO COMED

ComEd takes exception to the Proposed Order's (pp. 20-22) decision to adopt paragraph F.(b) of the Commission Staff's proposed instructions, which reads as follows:

F.(b) In reporting the level of reliability, determine and define each level or category of reliability, *e.g.*, Firm (same reliability as native load firm), Marketer Firm (interruptible, but with liquidated damages), other type of firm (specify), or type of non-firm (all other transactions -- specify), and designate each with a capital letter, *e.g.*, A, B, C, etc. Also provide information regarding the delivery obligations of the selling entity.

ComEd objects to the parenthetical definitions contained in Section F.(b), and asserts that it is "misleading" to define "Marketer Firm" as "interruptible, but with liquidated damages."

The Proposed Order's decision to adopt the language of paragraph F.(b) is supported by the evidence and should be affirmed. As the Ameren Companies' witness, Richard Voytas, explained, unlike "firm as Native Load," which is a facilities-based product, "Marketer Firm" is a financially-based product which does not have capacity or reserve requirements. [Ameren Ex. 3.0, p. 3.] Should it be necessary to curtail load, the load served by facilities-based capacity is the last load to be curtailed. Conversely, load served by financially-based energy and capacity is curtailed ahead of facilities-based capacity. [*Id.*, pp. 3-4/]

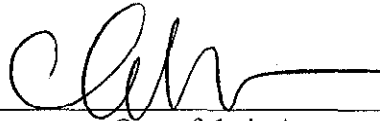
Contrary to ComEd's assertion, therefore, from a reliability perspective, it is accurate to characterize Marketer Firm as a type of "interruptible" power. There is no obligation that the provider of Marketer Firm deliver or arrange for the delivery of power. The only firm obligation of a Marketer Firm provider is an economic obligation -- to make the buyer whole in the event that the seller cannot or elects not to deliver. Thus, while the Marketer Firm provider has an economic obligation greater than that of the provider of a traditional interruptible product, from a reliability perspective, Marketer Firm is the same as an interruptible product -- the provider has no obligation to deliver. Since the Staff proposed to categorize products "by level

of reliability," Staff's characterization of Marketer Firm as "interruptible, but with liquidated damages" is accurate and was properly adopted by the Proposed Order.

WHEREFORE, the Hearing Examiner's Proposed Order should be adopted by the Commission.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY
UNION ELECTRIC COMPANY

By: _____



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CERTIFICATE OF SERVICE

Christopher W. Flynn, an attorney, hereby certifies that he caused copies of the accompanying Reply Brief on Exceptions of the Ameren Companies to be served on the individuals listed on the attached Service List via Federal Express this 13th day of April, 2000.

A handwritten signature in black ink, appearing to read 'CW Flynn', is written over a horizontal line.

Christopher W. Flynn

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